



DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Part 9

RIN 2900-AQ37

Servicemembers' Group Life Insurance – Family Servicemembers' Group Life Insurance– Member Married to Member

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: VA proposes to clarify implementation of sec. 642 of the National Defense Authorization Act (NDAA) for Fiscal Year 2013 (FY13), which eliminated automatic enrollment in Family Servicemembers' Group Life Insurance (FSGLI) for insurable dependents who are members of a uniformed service and are automatically covered under Servicemembers' Group Life Insurance (SGLI). VA proposes that a SGLI-covered member who marries another SGLI-eligible member after January 1, 2013, the date on which the FY13 NDAA was enacted, or is married to a person who becomes eligible for SGLI after January 1, 2013, may only enroll or re-enroll in or increase FSGLI-spousal coverage, upon applying for such coverage and providing proof of his or her spouse's good health. Further, VA proposes not to require a SGLI covered member to apply or provide proof of good health for a member spouse or for a member dependent child to continue FSGLI coverage in force at the time the spouse or dependent child became a SGLI eligible member.

DATES: Comments must be received on or before [Insert date 60 days after date of publication in the *FEDERAL REGISTER*].

ADDRESSES: Written comments may be submitted through

<http://www.Regulations.gov>; by mail or hand-delivery to: Director, Office of Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1064, Washington, DC 20420; or by fax to (202) 273-9026. (This is not a toll-free telephone number.) Comments should indicate that they are submitted in response to “RIN 2900-AQ37 – Servicemembers' Group Life Insurance – Family Servicemembers' Group Life Insurance Regulation Update – Member Married to Member.” Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1064, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment. (This is not a toll-free telephone number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at <http://www.Regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Paul Weaver, Department of Veterans Affairs Insurance Center (310/290B), 5000 Wissahickon Avenue, Philadelphia, PA 19144, (215) 842-2000, ext. 4404. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Veterans' Survivor Benefits Improvements Act of 2001 (“2001 Act”), Pub. L. 107-14, sec. 4, 115 Stat. 25, originally created FSGLI, which provides automatic coverage for spouses and dependent children of SGLI-covered members. The FSGLI automatic coverage provisions were created to simplify the process for obtaining FSGLI coverage during deployment. The 2001 Act provides for free, automatic dependent coverage for children in the amount of \$10,000, which cannot be declined or reduced so long as the member carries SGLI. See 38 U.S.C.

1967(a)(1)(A)(ii), (a)(2), (a)(3)(A)(iii), (a)(3)(B); 1969(g)(1)(A). In addition, the 2001 Act prohibits requiring proof of good health for a child. See 38 U.S.C. 1967(c). FSGLI dependent child coverage is effective from the latest of the applicable dates enumerated under 38 U.S.C. 1967(a)(5)(A)-(D) and (F), which refers to the date a child becomes an insurable dependent, namely the date of birth, date of adoption, or the date of entrance into the member's household, and this coverage remains effective for as long as the member maintains SGLI coverage or until the child no longer qualifies as an insurable dependent.

In contrast, automatic FSGLI-spousal coverage requires payment of premiums and can be declined or reduced by the member to less than the \$100,000 statutory maximum as long as the spousal coverage is equal to or less than the amount of SGLI coverage held by the member. See 38 U.S.C. 1967(a)(2)(B), (a)(3). Once a member declines or reduces FSGLI-spousal coverage, or when a spouse eligible for FSGLI coverage is otherwise not insured under FSGLI, an application and proof of the spouse's good health is required to elect, reinstate, or increase coverage. See 38 U.S.C. 1967(c). FSGLI-spousal coverage is effective from the latest of any of the applicable dates enumerated under 38 U.S.C. 1967(a)(5)(A)-(D) and (E), which refers to the date of marriage of the spouse to the member.

However, the automatic coverage provisions of the 2001 Act caused the unintended consequence of creating debts for servicemembers when lags occurred in updating personnel records to reflect changed marital status, i.e., in the case of marriage. Such delays created premium debts requiring the member to pay back premiums for automatic FSGLI-spousal coverage in force prior to the branch of service

receiving notification of the member's marriage. In other words, a member was required to pay premiums for automatic spousal coverage, even if it meant paying retroactive premiums for a covered period during which the branch of service was unaware of the member's marriage. In a case in which a member married another member, since each married member was responsible to pay any retroactive premiums associated with FSGLI-spousal coverage for the other, the impact on multiple-member families was magnified.

The FY13 NDAA, sec. 642, 126 Stat. 1632, 1783, was signed into law on January 2, 2013, to address the problem of premium debts, at least in multiple-member families, by eliminating automatic FSGLI coverage for insurable dependents who are also members of a uniformed service. Section 642 eliminated automatic FSGLI enrollment for any insurable dependent covered under SGLI based on his or her own member status. The term "insurable dependent" includes a child as well as a spouse. See 38 U.S.C. 1965(10)(A) and (B). However, current law does not address certain issues, such as what happens to FSGLI coverage of a spouse or dependent child who later becomes a member, i.e., whether existing FSGLI coverage continues for a member's spouse or dependent child who is insured under FSGLI at the time he or she becomes a member; whether a member can obtain or increase FSGLI coverage for a spouse or dependent child who becomes a member or when a member marries another member even though the coverage is not automatic; and what happens to FSGLI coverage when a spouse or dependent child leaves service.

To promptly address the statutory gaps noted above, VA adopted an interim policy that (1) allows FSGLI coverage to continue for a spouse or dependent child who

was covered by FSGLI prior to becoming a SGLI-covered member based on his or her own member status after January 1, 2013, and (2) permits a servicemember who marries another SGLI-eligible member after January 1, 2013, or is married to a person who becomes a SGLI-eligible member based on his or her own member status after January 1, 2013, to enroll or re-enroll in or increase FSGLI-spousal coverage only upon applying for such coverage and providing proof of the spouse's good health. In accordance with 38 U.S.C. 1967(c), this policy continues any FSGLI coverage in force, while requiring an application from the member and proof of the eligible spouse's good health to enroll or re-enroll an FSGLI-eligible spouse who is not so insured or to increase FSGLI coverage for the spouse. As such, this policy applies to member-spouses while they are in service as well as those member-spouses who separate from service. See 38 U.S.C. 1967(c). VA believes that this policy effectively addresses some of the issues arising from the FY13 NDAA that eliminated automatic FSGLI coverage for the limited class of dependents addressed by the law, and we now seek to codify this policy in regulations.

VA proposes to implement regulatory guidance for the amended section 1967(a)(1) by adding a new paragraph (f) to 38 CFR 9.2, redesignating §§9.3 through 9.22 as §§9.4 through 9.23 and adding a new §9.3. New paragraph (f) of 38 CFR 9.2 would state that the effective date of coverage for an insurable spouse who qualifies for FSGLI under 38 U.S.C. 1967(a)(1) but who was not so insured or was insured at a reduced rate will be the date the uniformed service receives an application and proof of the insurable spouse's good health, subject to newly created 38 CFR 9.3.

New 38 CFR 9.3 would clarify VA's implementation of the amendments to 38 U.S.C. 1967(a) made by the FY13 NDAA that was enacted on January 2, 2013. VA therefore proposes to provide, in proposed § 9.3(a), that a SGLI-covered member who (1) marries another SGLI-eligible member after January 1, 2013, or (2) is married to a person who becomes a SGLI-eligible member after January 1, 2013, may only enroll or re-enroll the member-spouse in or increase FSGLI-spousal coverage upon applying for such coverage and providing proof of the member-spouse's good health. As proposed in § 9.3(c), consistent with 38 U.S.C. 1967(c), the requirements for application and proof of the spouse's good health also apply when a member seeks to enroll or re-enroll a member-spouse who is not insured in FSGLI, or seeks to increase FSGLI-spousal coverage, after the member-spouse separates from service. However, as provided in proposed § 9.3(b), if a member's spouse was insured under FSGLI at the time the spouse became a member, the pre-service FSGLI-spousal coverage would continue without the need for the member to apply or provide proof of the spouse's good health. Similarly, as provided in proposed § 9.3(c), if a member's spouse was insured under FSGLI at the time the spouse separates from military service, the FSGLI-spousal coverage carried in service would continue post-separation without the need for the member to apply or provide proof of the spouse's good health.

For a member married to another member, VA has determined that requiring an application that asks for proof of good health to enroll or re-enroll in or to increase spousal FSGLI strikes the appropriate balance between offering FSGLI coverage to the extent permitted by law and adhering to sound actuarial principles. By requiring an application that asks for proof of good health to enroll a member's spouse for FSGLI-

spousal coverage, the proposed rule would provide insureds the opportunity to meet their financial needs while mitigating the potentially negative impact of “adverse selection” in the program.

Adverse selection occurs when individuals use their superior knowledge of their insurability to minimize the period of time over which they are likely to pay premiums for coverage. Such a practice unfairly shifts the premium paying burden to other individuals paying premiums for coverage over a longer period of time, and potentially undermines the financial health of the program to the detriment of all insureds. Insurance programs rely on a pooling of risks, and premium rates are set according to the expected mortality of the insurance pool. If a disproportionate number of insureds in substandard health enter the program or carry higher coverage amounts than healthier individuals in the program, the increased mortality experience will exceed that upon which the premium rates are based and could impact the program negatively by driving up the cost of premiums for all program participants. As such, the proof of health requirement incorporated in the proposed rule would minimize the potential for adverse selection.

Further, by initiating coverage from the date the member submits an FSGLI application to enroll their SGLI-eligible spouse, the proposed rule would remain consistent with Congressional intent to prevent debts resulting from retroactive coverage during an extensive period when the member had not paid premiums. Moreover, VA has determined that maintaining existing coverage for dependent spouses enrolled in FSGLI prior to becoming a SGLI-eligible member, or enrolled in FSGLI at the time of separation from service, should continue because it is not the type

of “automatic coverage” intended to be curtailed by the FY13 NDAA and would not invoke the concerns with overpayments sought to be remedied by the change in law.

VA notes that SGLI-insurable dependent children, like a member married to another member (i.e., a member-spouse), are automatically enrolled in SGLI based on their status as members. Since passage of the 2013 NDAA, however, they are no longer automatically insured for FSGLI under their parent’s coverage.

We propose to provide in 38 CFR 9.3(d) that, after January 1, 2013, an insurable child who is a member when a parent’s SGLI coverage commences is not eligible for automatic dependent coverage under the parent’s FSGLI. We further propose that dependent coverage in effect for an insurable child prior to the child becoming a member shall remain in effect so long as the child remains an insurable dependent. However, if an insurable child was not covered prior to becoming a member, the child could not be covered under a parent’s FSGLI after the child becomes a member.

VA believes that this proposal would comply with the 2013 law change and allow FSGLI coverage to remain in place for those multiple-member families who (1) had been carrying FSGLI prior to a dependent child becoming a SGLI-eligible member and (2) anticipate keeping FSGLI coverage for the duration of their member-child’s status as a dependent.

Because current statute at 38 U.S.C. 1967(c) prohibits requiring proof of good health to enroll any dependent child in FSGLI, regardless of whether the child is also eligible for SGLI as a member, VA cannot allow enrollment in FSGLI for this limited class of dependent children upon application and providing proof of good health. The statutory bar to requiring proof of good health to enroll dependent children makes such

a policy necessary. VA believes that allowing dependent children with automatic SGLI coverage to also enroll in FSGLI by simply submitting an application, without also requiring proof of good health, would run counter to sound actuarial principles by encouraging adverse selection. VA recognizes that dependent children who are also eligible for SGLI would only be eligible to retain FSGLI coverage in force prior to becoming a member, and unlike a member married to another member, they would not be able to enroll in new FSGLI coverage upon application and providing proof of good health. However, because VA is precluded by statute from requiring proof of good health to enroll any dependent in FSGLI, we cannot adopt such a policy as was done for a member married to another member.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This proposed rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521).

Executive Orders 12866, 13563 and 13771

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at <http://www.regulations.gov>, usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's Web site at <http://www.va.gov/orpm/>, by following the link for "VA Regulations Published."

This proposed rule is not expected to be an EO 13771 regulatory action because this proposed rule is not significant under EO 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612.

Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number and title for the program affected by this document is 64.103, Life Insurance for Veterans.

List of Subjects in Part 9

Life insurance, Military personnel, Veterans

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Pamela Powers, Chief of Staff, Department of Veterans Affairs, approved this document on February 5, 2020, for publication.

Luvenia Potts,
*Regulation Development Coordinator,
Office of Regulation Policy & Management,
Office of the Secretary,
Department of Veterans Affairs*

For the reasons stated in the preamble, VA proposes to amend 38 CFR part 9 as set forth below:

PART 9—SERVICEMEMBERS' GROUP LIFE INSURANCE AND VETERANS' GROUP LIFE INSURANCE

1. The authority citation for part 9 continues to read as follows:

Authority: 38 U.S.C. 501, 1965-1980A, unless otherwise noted.

2. Section 9.2 is amended by adding paragraph (f) to read as follows:

§ 9.2 Effective date; applications.

* * * * *

(f) Except as provided in §9.3:

(1) For an insurable spouse who was eligible for coverage under 38 U.S.C. 1967(a)(1)(A)(ii) but was not so insured or was insured at a reduced rate and who became a member, and

(2) For a member-spouse covered under 38 U.S.C. 1967(a)(1)(A)(i) and who was also eligible for coverage under 38 U.S.C. 1967(a)(1)(A)(ii) but who was not so insured or was insured at a reduced amount, the effective date of enrollment, re-enrollment, or an increase in coverage under 38 U.S.C. 1967(a)(1) shall be the date the uniformed service receives an application and proof of the insurable spouse's good health.

§§ 9.3 through 9.22 [Redesignated]

3. Redesignate §§ 9.3 through 9.22 as §§ 9.4 through 9.23.

4. Add a new § 9.3 to read as follows:

§ 9.3 Family Servicemembers' Group Life Insurance insurable dependents who become Servicemembers' Group Life Insurance eligible members, and

Servicemembers' Group Life Insurance eligible members who marry

Servicemembers' Group Life Insurance eligible members.

(a) A Servicemembers' Group Life Insurance-covered member who --

(1) Marries another Servicemembers' Group Life Insurance eligible member after January 1, 2013, or

(2) Is married to a person who becomes a Servicemembers' Group Life Insurance eligible member after January 1, 2013, may only enroll or re-enroll the member-spouse in or increase Family Servicemembers' Group Life Insurance spousal coverage upon applying for such coverage and providing proof of the spouse's good health.

(b) A spouse shall remain eligible to be covered by any existing Family Servicemembers' Group Life Insurance spousal coverage without the member applying for such coverage or providing proof of the spouse's good health in a case where the spouse is enrolled in coverage under 38 U.S.C. 1967(a)(1)(A)(ii) prior to becoming a member married to another member.

(c) A member's spouse who was insured under Family Servicemembers' Group Life Insurance at the time the spouse separates from military service will continue to be covered under the spousal Family Servicemembers' Group Life Insurance carried while in service, and the member will not need to apply or provide evidence of the spouse's good health post-separation. However, if a member seeks to enroll or re-enroll for coverage under Family Servicemembers' Group Life Insurance a spouse who did not have such spousal insurance coverage, or seeks to increase Family Servicemembers' Group Life Insurance coverage for such spouse, after the spouse separates from

military service, the member will need to apply and provide proof of the spouse's good health post-separation.

(d) After January 1, 2013, an insurable child who is a member at the time a parent's Servicemembers' Group Life Insurance coverage commences is not eligible for automatic dependent coverage under 38 U.S.C. 1967(a)(1)(A)(ii). Dependent coverage in effect for an insurable child prior to becoming a member shall remain in effect so long as the child remains an insurable dependent. If an insurable child was not covered prior to becoming a member, the child cannot be covered under 38 U.S.C. 1967(a)(1)(A)(ii) after the child becomes a member.

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